Guest Blog: The Supreme Court of FL Rules in Favor of Policyholder on Application of Florida's Bad Faith Law

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On September 20, 2018, in a case where UP weighed in as *amicus curiae*, the Supreme Court of Florida issued its opinion, affirming Florida's long held bad faith precedent. The state's high court accepted the case from Florida's Fourth District Court of Appeal, which reversed a $9.2 million jury verdict obtained by a policyholder against GEICO for failing to handle a claim in good faith on behalf of its insured.

In the underlying action, James Harvey, the insured, was involved in an automobile accident with John Potts. Potts died from the injuries in the accident, leaving behind a wife and three children. GEICO insured Harvey under a $100,000 liability policy. GEICO was aware that there was significant financial exposure to Harvey because Potts had died leaving multiple survivors and Harvey's insurance coverage was only $100,000. The Potts' estate attorney requested from a GEICO adjustor a statement from Harvey. However, the GEICO adjustor never passed this request onto Harvey or Harvey's lawyer. Such a statement would have established whether he had sufficient business assets to be worth suing, among other things. But instead, the GEICO adjustor said Harvey was not available for such a statement and never told Harvey that the statement was even requested. Three days later, GEICO tendered the full policy limits to the Potts' estate attorney, along with a release and affidavit of coverage. The GEICO adjustor continued its failure to keep its insured informed of key communications and events throughout the claims handling process. Eventually, the wrongful death case was tried before a jury that found Harvey 100% at fault and awarded the estate $8.47 million in damages.

Harvey filed a bad faith claim against GEICO based on the judgment that exceeded his policy limits of

$100,000. Of particular importance, the Potts' estate attorney testified that had he known that Harvey's only other asset was a business account worth $85,000 (the purpose of the requested statement), he would not have filed suit and advised the estate to accept the policy limits. The estate representative testified she would have accepted the policy limits offered by GEICO if advised to do so by her attorney. In the bad faith case, Harvey presented evidence that showed that the GEICO adjustor had a history of poor performance, including communication failures. The jury found that GEICO had acted in bad faith and entered judgment in favor of Harvey in the amount of $9.2 million. On appeal, the Fourth District overturned the judgment.

The Supreme Court ultimately reinstated the trial court judgment and made several key findings. The Court reaffirmed the good faith duties of insurers as set forth almost four decades ago in *Boston Old Colony v. Gutierrez*, 386 So. 2d. 783 (Fla. 1980) and, more recently, in *Berges v. Infinity Insurance Co.*, 896 So. 2d 665 (Fla. 2004). The Court also reaffirmed that the focus in a bad faith case is not on the actions of the claimant or insured but on the insurer fulfilling its obligations to the insured. Importantly, the Court noted that GEICO's reliance on a nonbinding decision from the Eleventh Circuit Court of Appeals could not be reconciled with the Florida's bad faith jurisprudence. The Florida Supreme Court noted that the federal courts have create an artificial checklist that failed to consider *Boston Old Colony,* and its holding that bad faith is focused on the totality of an insurer's conduct. Ultimately, the Court held that the lower appellate court misapplied Florida precedent and reinstated the judgment against GEICO. United Policyholders filed an amicus brief with the Supreme Court of Florida. The case is *Harvey v. GEICO General Insurance Company*, No. SC17-85 (Fla. Sept. 20, 2018).